IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Gopal Lal Vs. State of Rajasthan
(D.B. Criminal Jail Appeal No.1692/2002)

D. B. Criminal Jail Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 21-8-2002 in Sessions Case No.100/2001 passed by Shri K.B.Katta, RHJS, Additional Sessions Judge No.2, Bundi.

Date of Judgment: August 01, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Ms. Anupama Parashar, Amicus Curiae, for the appellant.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Having a heart full of dejection, Gopal Lal, appellant herein, has preferred this appeal from prison cell against the judgment dated August 21, 2002 of the learned Additional Sessions Judge No.2, Bundi, convicting and sentencing the appellant as under:-

U/s.302 IPC:

To suffer life imprisonment and fine of Rs.2000/-, in default to further suffer rigorous imprisonment for six months.

U/s.449 IPC:

To suffer rigorous imprisonment for ten years and fine of Rs.2000/-, in default to further suffer rigorous imprisonment for six months.

The substantive sentences were ordered to run concurrently.

2. The appellant was put to trial on the charge of committing house trespass by night and killing his wife Kamlesh. It is alleged that on September 8, 2001 around 10.45 while Kamlesh was sleeping in her parental house the appellant axed her. A report was lodged by Bhura (Pw.2), father-in-law of appellant, at the Police Station Basoli, where case under sections 302 and 452 IPC was registered and investigation commenced. Dead body was subjected to autopsy, necessary memos were drawn, statements of witnesses were recorded, appellant was arrested and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge No.2, Bundi. Charges under sections 449 and 302 IPC were framed against the appellant, who denied the charge and claimed trial. The prosecution in support of its case examined as may as 12 witnesses. In the explanation under Sec.313 Cr.P.C., the appellant claimed innocence. No witness in support of his defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellant as indicated herein above.

3. We have heard learned Amicus Curiae and learned Public Prosecutor and with their assistance scanned the material on record.

4. Death of Kamlesh was undeniably homicidal in nature. As per Post Mortem Report (Ex.P-8) following ante mortem injuries were found on the dead body:-

> 1. Incised wound of 11” x 1 x 3” at left face and neck extending from lat angle of mouth to lat side of neck direction Rt. to left, deep on mouth side of mandible at angle, muscles, sub cut tissue vessels cut Hemorrhagic fluid present.
> 2. Incised wound of 4” x 1” x 1” above 1” to injury No.1 at face muscles of mouth cutting wound gap is present.

3. Incised wound of 8” x 1” x 3” left face extending from maxilla to neck below ear, muscles, sub tissue and vessels cut through maxilla and mandible below neck. Hemorrhagic fluid.

In the opinion of Dr. Manoj Kumar Jain (Pw.8) the cause of death was hemorrhagic shock due to injuries.

5. The prosecution case is founded on the testimony of Bhura (Pw.2), Ghisi Bai (Pw.1) and Durga Lal (Pw.3). Bhura (Pw.2) in his deposition stated that around 10.30 PM appellant came armed with axe to his house and inflicted three blows with axe on the neck and jaw of Kamlesh, who died instantly. Testimony of Bhura gets corroboration from the evidence of Ghisi Bai (Pw.1) and Durga Lal (Pw.3).

6. Despite searching cross examination evidence of Bhura, Ghisi Bai and Durga Lal could not be shattered. It appears that the appellant came to the house of Bhura seven days prior to incident and asked his wife Kamlesh to accompany him but Kamlesh declined to accompany appellant since she gave birth to a dead child few days ago. The appellant became angry and because of the anger he visited the house of his father-in-law with premeditation. The prosecution is able to establish beyond reasonable doubt that the bodily injuries intended to be inflicted by the appellant were sufficient in the ordinary course of nature to cause death. The case of appellant is covered by clause Thirdly of Section 300 IPC and he was rightly convicted and sentenced under section 302 IPC. We however find that charge under section 449 IPC is not established against the appellant.

7. For these reasons, we find no merit in the appeal and the same

accordingly stands dismissed. Conviction and sentence awarded to the appellant under section 302 IPC are maintained. We however acquit him of the charge under section 449 IPC.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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